

Response Deadline: November 4, 2011
Hearing Date and Time: December 6, 2011

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

**LEHMAN BROTHERS HOLDINGS INC., et
al.**

Debtors.

Chapter 11

Case No. 08-13555(JMP)

(Jointly Administered)

**OBJECTION OF BLUE MOUNTAIN CREDIT ALTERNATIVES MASTER FUND L.P.
TO ASSUMPTION OF A CERTAIN EXECUTORY CONTRACT**

To: The Honorable James M. Peck
United States Bankruptcy Judge:

Blue Mountain Credit Alternatives Master Fund LP ("BMCA"), by and through its undersigned counsel, hereby submits this objection (the "Objection") to the Debtors' proposed assumption of a certain alleged executory contract (the "Alleged Executory Contract") identified simply as "Novation Fee for trade 42701 dated 11th Sept 2008 with maturity 20th Dec 2010" in Debtors' Exhibit 2 to the *Plan Supplement* dated October 25, 2011 (the "Plan Supplement")

[Docket No. 21254] in connection with section 11.1 of the *Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and its Affiliated Debtors* dated August 31, 2011 (the “Third Amended Plan”) [Docket No. 19627]. In support of its Objection, BMCA respectfully states as follows:

PRELIMINARY STATEMENT

1. BMCA submits this Objection to the assumption of the Alleged Executory Contract and to preserve its rights to supplement this Objection.

BACKGROUND

The Debtors’ Bankruptcy Cases and Proposed Plan of Reorganization

2. On September 15, 2008, Lehman Brothers Holdings Inc. (“LBHI”) and certain of its affiliates filed for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York. In re Lehman Brothers Holdings Inc., et al., Case No. 08-13555 (JMP) (Bankr. S.D.N.Y.).

3. On September 1, 2011, the Debtors filed their Third Amended Plan and related disclosure statement [Docket No. 19629]. The deadline to object to the Third Amended Plan is November 4, 2011 (the “Plan Objection Deadline”). The confirmation hearing for the Third Amended Plan is currently scheduled for December 6, 2011 at 10:00 a.m. (the “Confirmation Hearing Date”).

Assumption of Alleged Executory Contract Under the Third Amended Plan

4. Pursuant to section 11.1 of the Third Amended Plan, upon confirmation of the plan, and as of the plan’s effective date, all executory contracts that exist between a Debtor and any counterparty shall be deemed rejected, except for those executory contracts, among others, that are specifically designated in the Plan Supplement as a contract to be assumed by a Debtor, subject to the Debtors’ right to delete or add contracts to the assumed contract list. Third

Amended Plan, § 11.1. Pursuant to Debtors' *Notice of (i) Approval of Disclosure Statement; (ii) Establishment of Record Date; (iii) Hearing on Confirmation of the Plan; and (iv) Procedures and Deadline for Voting on the Plan* dated September 9, 2011 (the "Confirmation Hearing Notice"), the Debtors were to have served each counterparty to a contract listed in the Plan Supplement with a notice of the Debtors' intent (a "Notice of Intent") to assume the contract and the cure amount associated with the proposed assumption at least forty (40) days prior to the Confirmation Hearing Date.¹ Confirmation Hearing Notice, ¶ 9(a) at 4-5. Accordingly, such notices were to be mailed to BMCA on or before October 27, 2011.

5. The Debtors filed the Plan Supplement on October 25, 2011. Exhibit 2 of the Plan Supplement includes a schedule of the purported executory contracts that the Debtors intend to assume pursuant to section 365 of the Bankruptcy Code and section 11.1 of the Third Amended Plan.

6. The Alleged Executory Contract between BMCA and Lehman Brothers Special Financing Inc., described simply as "Novation Fee for trade 42701 dated 11th Sept 2008 with maturity 20th Dec 2010," is included on Exhibit 2 of the Plan Supplement. Although a Notice of Intent was to have been served by October 27, 2011, BMCA has not received a copy of such notice and first became aware that the Alleged Executory Contract was included on Exhibit 2 to the Plan Supplement on the day this Objection is being filed.

BASIS FOR OBJECTION

7. First, as noted above, BMCA was not timely served with a copy of the Notice of Intent and has not had an adequate opportunity to fully investigate the facts and

¹ Pursuant to section 11.1 of the Third Amended Plan, the Debtors reserved their right to amend the Plan Supplement to add or remove any executory contract prior to the Confirmation Date (as defined therein). Third Amended Plan, § 11.1.

circumstances relating to the Alleged Executory Contract and the Debtors attempt to assume it. Accordingly, BMCA expressly reserves its right to supplement this Objection.

8. Second, BMCA does not believe that the Alleged Executory Contract is, in fact, an executory contract within the meaning of section 365 of the Bankruptcy Code. Moreover, the Debtors have not demonstrated that the Alleged Executory Contract is in fact executory. Therefore, by definition, the Alleged Executory Contract cannot be assumed. Furthermore, to the extent the Alleged Executory Contract is related to a derivative contract that BMCA has terminated, it is not executory and cannot be assumed by the Debtors.

9. Third, to the extent the Alleged Executory Contract is an executory contract, BMCA objects to its assumption because the Debtors have failed to demonstrate that they can or will cure any defaults, compensate BMCA for any loss, and/or provide adequate assurance of performance pursuant to section 365(b)(1) of the Bankruptcy Code.

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CONCLUSION

Wherefore, BMCA respectfully requests that this Court deny the Debtors' request to assume the Alleged Executory Contract between BMCA and LBSF as identified in Exhibit 2 to the Plan Supplement, and for such other relief as the Court deems just and appropriate.

Dated: November 4, 2011

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